

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on March 27, 2001 at 3:15 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Tom Zook (R)

Members Excused: Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 517, 3/23/2001; SB 518,
3/26/2001; SB 521, 3/26/2001
Executive Action: SB 512; SB 502; SB 503; SB
509; SB 515; SB 517; SB 518;
SB 521; HB 564

HEARING ON SB 517

Sponsor: SENATOR DON RYAN, SD 22, Great Falls

Proponents: Greg Groepper, Energy Share

Opponents: None

Opening Statement by Sponsor:

SENATOR DON RYAN, SD 22, Great Falls, submitted written testimony, **EXHIBIT**(ens69b01).

Proponents' Testimony:

Greg Groepper, Energy Share, supported the legislation.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR RYAN had talked with the Public Service Commission (PSC) and was informed that one cent could create as much as \$50 million in additional revenue. Montana Power Company (MPC) said that figure may be in excess of \$70 million. That would allow a tremendous amount of money to be available to mitigate what will happen in the future.

HEARING ON SB 518

Sponsor: SENATOR JOHN COBB, SD 25, Augusta

Proponents: None

Opponents: Jim Mockler, Montana Coal Council

Opening Statement by Sponsor:

SENATOR JOHN COBB, SD 25, Augusta, stated that the bill would establish a process to help offset the impacts of a major energy generation facility development on local government infrastructure and schools. In addition, a major energy generation facility impact board would be established. He referred to section 24 on page 20. The section clarifies that the coal board has the authority to award grants for coal bed methane development.

Proponents' Testimony: None

Opponents' Testimony:

Jim Mockler, Montana Coal Council, supported coal fired facilities. The purpose of the coal board is to help communities set up evaluations in advance. With regard to coal bed methane, he noted that it is gas, not coal.

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR COBB cited that coal board grants are one time grants.

HEARING ON SB 521

Sponsor: **SENATOR STEVE DOHERTY, SD 24, Great Falls**

Proponents: None

Opponents: None

Opening by Sponsor:

SENATOR STEVE DOHERTY, SD 24, Great Falls, declared that the bill clarified the energy emergency powers of the Governor. The Governor would be given broad powers in the event of an energy emergency.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR RYAN asked if there were any budgetary powers associated with the emergency power granted to the Governor. **SENATOR DOHERTY** responded there were not specific budgetary powers included. The powers would include gathering information and ordering people to do certain things based on that information. In addition, the authority to subpoena documents, place witnesses under oath, and the coordination of investigations are other included powers. **SENATOR RYAN** understood there would be a \$12 million cap allowed to the governor to add on as a supplemental for the next biennium. He wondered about the ability to avoid paying current environmental laws. **SENATOR DOHERTY** answered there were abilities to do specific things in extraordinary circumstances. However, this bill would not affect current law.

SENATOR RYAN purported that the default supplier currently has to supply power to the people on their system with the low rate. He asked if the Governor could order conservation by those people, then turn around, and sell the saved power to benefit businesses. **SENATOR DOHERTY** had not considered that scenario.

SENATOR TOM ZOOK believed the bill would become effective only if life, health, or property became jeopardized. **SENATOR DOHERTY** responded that energy emergency services included curtailing essential services, producing essential goods, and disruption of significant sectors of the economy. There isn't a specific trigger. **SENATOR ZOOK** wondered how the loss of jobs would apply to that definition. **SENATOR DOHERTY** exclaimed that the definition of energy emergency included having a shortage of energy resulting in significant sectors of the economy being disrupted. In that case, the government would have extraordinary powers.

SENATOR BEA MCCARTHY questioned the sponsor about an energy supply alert in relation to the summer of 2000 when the Bitterroot fires barely missed the Bonneville Power Administration (BPA) power lines. **SENATOR DOHERTY** replied that had the fires knocked out the power in that area, the situation would have qualified as an energy emergency situation.

SENATOR ROYAL JOHNSON asked what was different about energy supply alert and energy emergency. **SENATOR DOHERTY** thought the energy emergency law was a staged response. **SENATOR JOHNSON** wondered if he and the Majority Leader had considered what the price of energy would be to qualify as an emergency. **SENATOR DOHERTY** responded it would result in the curtailment of essential services, production of essential goods, or destruction of significant sectors of the economy.

Closing by Sponsor:

SENATOR DOHERTY thought it might be a good idea to insert "or the price of energy" in subsection 6.

EXECUTIVE ACTION ON SB 512

Motion: **SENATOR MCCARTHY** moved that **SB 512 DO PASS**.

Substitute Motion/Vote: **SENATOR HALLIGAN** made a substitute motion and moved **AMENDMENT SBO51201.AJM, EXHIBIT(ens69b02)**. **Substitute motion carried 10-0**. **SENATOR COREY STAPLETON** was excused.

Discussion:

SENATOR RYAN wondered how "gross revenue" on page 1, line 20 was going to fit into the determination of taxes. **Don Quander, Montana Large Customer Group**, understood that it would apply and be done on a graduated, incremental rate on gross revenue determined by the Department of Revenue (DOR) under subsequent provisions. The subsequent provisions set forth are standard provisions and statutory requirements that the DOR follows in the usual determinations of gross revenues and taxes.

Substitute Motion: **SENATOR DOHERTY** made a substitute motion to **STRIKE "MEGAWATTS" ON LINE 23 AND INSERT "MEGAWATT HOURS."**

Discussion:

Mr. Quander replied that in general, sales are priced in terms of megawatt hours or they may be priced in a contract in terms of average megawatts.

SENATOR DOHERTY withdrew his substitute motion.

SENATOR ZOOK was bothered by the fact that the bill doesn't accommodate the market. **SENATOR HALLIGAN** noted that the filings with the PSC indicated what the costs for the various entities were that were providing power. They weren't aware of any contract above \$28. **SENATOR ZOOK** assumed that the PSC would always be dealing with the issue in the future. **SENATOR HALLIGAN** said just for the three years that the bill would be alive.

{Tape : 1; Side : B}

Vote: Motion failed 4-7 with Doherty, Halligan, McCarthy, and Ryan voting aye.

EXECUTIVE ACTION ON SB 502

Motion: **SENATOR DOHERTY** moved **AMENDMENT SB050201.ASM, EXHIBIT (ens69b03) .**

Discussion:

Todd Everts explained that the amendments would provide for a target level on alternative renewable energy sources for the power authority. In addition, they would offer a mechanism to provide a discount at 20-30% through the default supplier or

cooperative to a school trust beneficiary to offset the acquisition of certain resources as a source of energy.

SENATOR ALVIN ELLIS was curious if the amendments would remove section 8, as was recommended during the hearing. **Mr. Everts** explained that the amendments did not do that.

Vote: Motion carried 6-5 with Cole, Johnson, Stapleton, Taylor, and Zook voting no.

Motion: SENATOR ELLIS moved to STRIKE SECTION 8.

Substitute Motion: SENATOR DOHERTY made a substitute motion THAT AN AMENDMENT BE DRAFTED TO MAKE SECTION 8 APPLICABLE TO UTILITIES REGULATED BY THE PSC.

Discussion:

SENATOR MCCARTHY wished for an explanation of the substitute motion. Mr. Everts exhorted that the amendment would make the condemnation authority provided for in the bill inapplicable to Montana Dakota Utilities (MDU), Montana Power Company (MPC), and any other public utility regulated by the PSC.

SENATOR STAPLETON wondered if law was being overridden. **SENATOR DOHERTY** explained that while **SENATOR ELLIS** wanted to get rid of the entire thing, he just wanted to limit certain powers.

Vote: Substitute motion carried 10-1 with Johnson voting no.

Motion/Vote: SENATOR ELLIS moved that SB 502 BE TABLED. Motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.

EXECUTIVE ACTION ON SB 503

Mr. Everts explained that the amendments for this bill would increase the bonding authority for the general obligation bonds to \$500 million. In addition, the Department of Natural Resources and Conservation (DNRC) shall honor those employment arrangements established in existing collective bargaining agreements associated with those facilities.

Motion/Vote: SENATOR DOHERTY moved AMENDMENT SB050301.ATE, EXHIBIT(ens69b04). Motion carried 9-2 with Johnson and Zook voting no.

Motion: SENATOR DOHERTY moved that SB 503 DO PASS AS AMENDED.

Substitute Motion: SENATOR STAPLETON made a substitute motion that **SB 503 BE TABLED**. He then withdrew his substitute motion for the purpose of discussion.

SENATOR DOHERTY wished to leave the choice up to the people in the form of a referendum.

Motion/Vote: SENATOR ELLIS moved that **SB 503 BE TABLED**. Motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.

EXECUTIVE ACTION ON SB 509

Motion: SENATOR DOHERTY moved that **SB 509 DO PASS**.

Discussion:

SENATOR ZOOK wondered if the sponsor had thought about a maximum number. SENATOR DOHERTY said a maximum amount in total of the credit that could be used might be a good idea.

SENATOR ELLIS questioned whether a sum had been decided on to be the cap or the idea that a cap would be inserted. SENATOR DOHERTY replied that a cap would be inserted, but the sum had not yet been determined.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 515

Motion/Vote: SENATOR MACK COLE moved **AMENDMENT SB051501.ATE, EXHIBIT**(ens69b05). Motion carried unanimously.

Motion: SENATOR COLE moved that **SB 515 DO PASS AS AMENDED**.

Discussion:

SENATOR STAPLETON inquired as to what happened in areas where there weren't power authorities and why it was needed so badly. SENATOR DOHERTY exclaimed that MPC hasn't let Montanans have public power in the state for many years.

Vote: Motion carried 6-5 with Doherty, Ellis, McCarthy, Ryan, and Stapleton voting no.

EXECUTIVE ACTION ON SB 517

Motion: SENATOR MCCARTHY moved that SB 517 DO PASS.

Discussion:

SENATOR ZOOK wanted clarification that the one cent to be collected would not go to the power company. SENATOR RYAN stated that was correct. The PSC would create a fund that the money would go to. SENATOR ZOOK also wondered if any of the money went to help fund the Low Income Energy Assistance Program (LIEAP). SENATOR RYAN replied that 10% of what is collected would go for low income assistance and conservation.

SENATOR STAPLETON wondered what would happen to the \$50 million if there was something unexpected and the money needed to be reverted or wasn't used. SENATOR RYAN proclaimed that the PSC would have a way to credit the money back to the people.

SENATOR WALT MCNUTT indicated that increasing the rate by one cent would automatically increase the dollar figure flowing into the Universal Systems Benefits Charge (USBC) programs. He thought that would be double-dipping. SENATOR RYAN declared that more money would be added. There is a portion in the bill for energy related job loss. SENATOR MCNUTT cited that there wasn't currently anything in the USBC that would mitigate job loss. SENATOR RYAN said that would come from the 10%.

{Tape : 2; Side : A}

SENATOR MCCARTHY questioned whether it would be up to the PSC to set regulations and requirements on page 3, line 29. SENATOR RYAN wouldn't have a problem with that, although it wasn't necessarily a responsibility of theirs. SENATOR MCCARTHY felt that was outside of their normal parameters.

SENATOR ELLIS didn't think this legislation was the solution for the problem.

SENATOR JOHNSON noted that the bill allows the PSC to require a public utility to charge up to one cent per kilowatt hour and asked if that was on every public utility in the state or if there were exemptions. SENATOR RYAN exhorted that it was for everything under the jurisdiction of the default supplier. SENATOR JOHNSON thought the bill was going to penalize the people facing the music. The only people to pay and receive benefits from the bill would be those currently on MPC's system and buying from the contract in effect at 2.25 cents. SENATOR RYAN

professed that the only people to pay are those currently on the default supplier.

Mr. Everts explained page 3, line 23 and said it was limited to MPC and possibly PacifiCorp as the utilities required to raise their rates.

Vote: Motion failed 2-9 with McCarthy and Ryan voting aye.

EXECUTIVE ACTION ON SB 518

Motion/Vote: SENATOR JOHNSON moved that SB 518 BE TABLED. Motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.

EXECUTIVE ACTION ON SB 517

Motion/Vote: SENATOR STAPLETON moved that SB 517 BE TABLED. Motion carried 9-2 with McCarthy and Ryan voting no.

EXECUTIVE ACTION ON SB 521

Motion: SENATOR ELLIS moved that SB 521 DO PASS.

Substitute Motion/Vote: SENATOR DOHERTY made a substitute motion THAT "OR THE PRICE OF ENERGY" BE INSERTED AFTER "SUPPLIES" ON PAGE 1, LINE 26. Substitute motion carried 10-1 with Zook voting no.

Discussion:

SENATOR ZOOK felt that it would be of benefit to be an attorney with regard to the bill and amendment. There could be a lot of room for argument. **SENATOR STAPLETON** agreed.

SENATOR RYAN assumed that natural gas was included and wondered if anyone from the Governor's office had said what they planned to do with the expansion of power. **SENATOR DOHERTY** was not aware of that.

SENATOR DOHERTY thought the act would give the Governor broad powers to investigate and order that energy be moved around. The Governor felt that the law needed to be clarified with regard to the trigger.

SENATOR RYAN referred to page 3, line 8, and was worried about the price. **SENATOR DOHERTY** said there wasn't a level, but that was existing law. If the Governor were to use these powers, she would have to contend with many different variables.

Substitute Motion/Vote: **SENATOR JOHNSON** made a substitute motion that **SB 521 BE TABLED**. Substitute motion failed 2-9 with Johnson and Zook voting aye.

Vote: Motion carried 10-1 with Johnson voting no.

EXECUTIVE ACTION ON HB 564

SENATOR HALLIGAN mentioned that there was a question whether the PSC had the authority to regulate the telecommunications cooperatives and others with respect to their USBC. **Martin Jacobson, PSC**, submitted written testimony from Bob Rowe, **EXHIBIT** (ens69b06) .

Motion: **SENATOR ELLIS** moved that **HB 564 BE CONCURRED IN**.

Substitute Motion/Vote: **SENATOR MCCARTHY** made a substitute motion and moved **AMENDMENT HB056401.ATE**, **EXHIBIT** (ens69b07) . Substitute motion carried 10-1 with Johnson voting no.

Vote: Motion carried 8-3 with Johnson, McNutt, and Taylor voting no.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens69bad)